

Before the
Federal Communications Commission

Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

In the Matter of

) MM Docket No. 93-17

)

Amendment of Section 73.202(b),

) RM-8170

Table of Allotments,

)

FM Broadcast Stations,

)

(Rosendale, New York)

)

MAY 31 1996

To: The Commission

MOTION TO STRIKE REPLY

Aritaur Communications, Inc. ("Aritaur"), by and through counsel, hereby submits its Motion to Strike the "Reply" filed by State University of New York ("SUNY") on May 22, 1996, in the above-captioned proceeding¹. In support whereof, the following is shown:

1. On April 23, 1996, SUNY filed an Application for Review of the Memorandum Opinion and Order, DA 96-376, released March 28, 1996, which denied a request by SUNY for reconsideration of the allotment of a new FM Channel 273A at Rosendale, New York. Aritaur filed an Opposition to SUNY's Application for Review on May 8, 1996, stating therein that: "SUNY argued that its proposed channel change should be protected from outside expressions of interest under §1.420(g) of the Rules." SUNY claims that this statement is

¹ Aritaur is filing this "Motion to Strike Reply" pursuant to §1.45 of the rules within 5 days of SUNY's Reply (including 3 additional days for mailing time and not counting "holidays") or May 31, 1996.

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"simply not true." Reply at p. 2 [emphasis in original]. SUNY claims that "SUNY's proposal for the channel change was subject to outside expressions of interest pursuant to the provisions to Section 1.420." Reply at p. 2 [emphasis in original]. As shown herein, SUNY is mistaken.

2. SUNY is the licensee of noncommercial FM station WFNP(FM), Rosendale, New York, operating on Channel 204A which it shares with another noncommercial FM station. In its original Petition for Rulemaking filed pro se on January 12, 1993 (copy attached as Exhibit 1 to this Motion), SUNY sought a non-adjacent, non-mutually exclusive channel change for WFNP(FM) from Channel 204A to Channel 273A. Such a proposal would ordinarily open Channel 273A at Rosendale for outside expressions of interest. However, in its Petition for Rulemaking, SUNY stated:

Because WFNP wishes to change channels to a non-mutually exclusive channel, they request that both channels 255A and 273A be allocated to Rosendale as its first and second local FM service and that channel 255A be set aside for other expressions of interest."

Exhibit 1 at p. 2 (emphasis added).

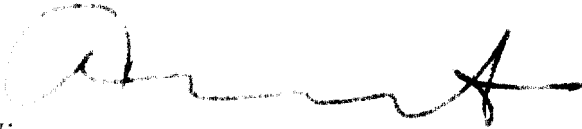
3. Later in the same Petition, SUNY asked that it be permitted to simply modify the license of WFNP "to specify operation on channel 273A in accordance with section 1.420(g)(2) of the Commission's Rules." Exhibit 1 at p.3. Section 1.420(g)(2) of the Rules permits a channel modification to a non-adjacent, non-mutually exclusive channel without being subject to competing expressions of interest if there exists an equivalent or superior class channel for use by other

interested parties. If the Commission receives an expression of interest, it will allot the equivalent channel while protecting the petitioner's proposed modified channel from outside expressions of interest. Therefore, it appears SUNY did seek protection from outside expressions of interest for the proposed modification of WFNP to Channel 273A. In its Report and Order, 10 FCC Rcd 11471 (1995) allotting Channel 273A to Rosendale, the Policy and Rules Division ("PRD") found that SUNY's proposal to modify the license of WFNP to Channel 273A could not be granted pursuant to §1.420(g) of the Rules. The PRD found that §1.420(g) did not apply to stations seeking to switch from a reserved band channel to a nonreserved band channel. Since SUNY's proposal was defective, the PRD did not consider whether to allot Channel 255A as an equivalent class channel. While SUNY did suggest Channel 255A as an equivalent channel that could be opened for expressions of interest, SUNY did not suggest Channel 273A be subject to such expressions and specifically sought protection under 1.420(g)(2) of the Rules. Therefore, Aritaur's Opposition is accurate.

4. SUNY's Reply adds nothing to the Commission's consideration of this case. It should be stricken from the record and given no consideration.

Respectfully submitted,

ARITAUER COMMUNICATIONS, INC.

By: 

Gary S. Smithwick
Shaun A. Maher

Its Attorneys

SMITHWICK & BELENDIUK, P.C.

1990 M Street, N.W.
Suite 510
Washington, DC 20036
(202) 785-2800

May 31, 1996

ROSENDAL\DLF\STRIKE.523

EXHIBIT 1

RECEIVED

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BEFORE THE
Federal Communications Commission
WASHINGTON, D. C. 20554

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JAN 12 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In The Matter of)
)
Amendment of Section 73.202(b),)
Table of Allotments,)
FM Broadcast Stations)
(Rosendale and New Paltz,)
New York))

RM

8170

To: Chief, Allocations Branch

PETITION FOR RULE MAKING

The State University of New York ("WFNP"), the licensee of non-commercial, WFNP (FM) Rosendale, New York, with its engineering consultant, pursuant to section 1.420 of the Commission's rules, respectfully submits a petition for rule making to make changes in the FM Table of Allotments, Section 73.202(b) of the Commission's rules as follows:

	<u>Current</u>	<u>Proposed</u>
Rosendale, New York	204A	255A, 273A

DISCUSSION

WFNP is currently licensed as a time-shared class A facility. WFPN shares its license with WRHV (channel 204B1) Poughkeepsie, NY. WFPN is seeking an alternative to continuing its time share arrangement which would allow both WFPN and WRHV to operate on a full time basis. To this end, WFPN seeks to modify the FM table of Allotments in the following manner:

1. Add channels 255A and 273A to Rosendale, New York.
2. Modify the WFPN license to specify operation on channel 273A.
3. Delete channel 204A from Rosendale, New York.

The reference coordinates for the community of Rosendale are:

41° 50' 27" N. Latitude
74° 05' 00" W. longitude

Because WFPN wishes to change channels to a non-mutually exclusive channel, they request that both channels 255A and 273A be allocated to Rosendale as its first and second local FM service and that channel 255A be set aside for other expressions of interest at Rosendale. Both channels would be site restricted. The reference coordinates for channel 255 would be:

41° 55' 45" N. Latitude
74° 07' 44" W. Longitude

The reference coordinates for channel 273 are:

41° 45' 48" N. Latitude
74° 04' 59" W. Longitude

Attached as Exhibit EE-2 is a frequency search showing that channel 255A is available for allotment to Rosendale with a site restriction of 10.5 km N-NW. WFNP further seeks the modification of its license to specify operation on channel 273A in accordance with section 1.420(g)(2) of the Commission's rules. Attached as Exhibit EE-1 is a frequency search showing that channel 273A may also be allotted to Rosendale with a site restriction of 8.6 km. South. WFNP would continue to operate as a non-commercial station on channel 273A.

These proposed changes would benefit the public's interest by:

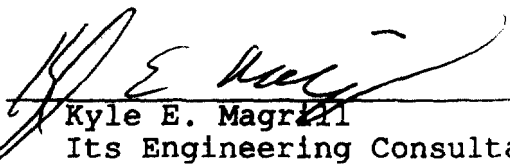
1. Allowing both WFNP and WRHV to upgrade to full time.
2. Adding new first and second local FM service to the city of Rosendale.

Upon a grant of this proposed rule making, WFNP will promptly file an application for a construction permit on channel 273A and will construct new facilities when the permit is granted.

It is therefore, respectfully, requested that, for the
afore mentioned reasons, the Commission issue a notice of
proposed rule making to commence the above mentioned
changes in the table of allotments at Rosendale, New York.

Respectfully Submitted,

The State University of New York

By: 
Kyle E. Magrill
Its Engineering Consultant

Date: 12/09/92

Magrill & Associates
P. O. Box 456
Orange Lake, Fl 32681
(904) 371-4288

I hereby declare, under penalty of perjury, that I
have read, verify and submit the foregoing.

The State University of New York

By: 
Harry K. Spindler

Title: Senior Vice Chancellor

State University of New York
c/o State University Plaza
Albany, NY. 12246
Attn: Mr. Lewis Rosenthal
(914) 257-3099

CERTIFICATE OF SERVICE

I, Denise Lynn Felice, a secretary in the law firm of Smithwick, & Belendiuk, P.C., certify that on this 24th day of May, 1996, copies of the foregoing were sent by first class mail, postage prepaid, to the following:

Mr. John A. Karousos (*)
Chief, Allocations Branch
Policy & Rules Division
Mass Media Bureau
Federal Communications Commission
2000 M Street, N.W.
5th Floor
Washington, DC 20554

Todd D. Gray, Esq.
Margaret L. Miller, Esq.
Dow, Lohnes & Albertson
1255 Twenty-Third Street, N.W.
Suite 500
Washington, D.C. 20037

Mark N. Lipp, Esquire
Mullin, Rhyne, Emmons
& Topel, P.C.
1000 Connecticut Avenue, N.W.
Washington, D.C. 20036-5383
Counsel for Sacred Heart
University, Inc.

Allan G. Moskowitz, Esquire
Kaye, Scholer, Fierman, Hays
& Handler
901 15th Street, N.W., Suite 1100
Washington, D.C. 20005
Counsel for
Span Communications Corp.

Mr. Dennis Jackson
Radio Rosendale
19 Boas Lane
Wilton, Connecticut 06897

Lauren A. Colby, Esquire
Attorney at Law
Post Office Box 113
Frederick, MD 21705
Counsel for Eric P. Straus

Erwin G. Krasnow, Esquire
Verner, Liipfert, Bernard,
McPherson & Hand
901 15th Street, N.W.
Washington, D.C. 20005
Counsel for David M. Fleisher
and Melissa M. Krantz

Jerold L. Jacobs, Esquire
Rosenman & Colin, L.L.P.
1300 19th Street, N.W.
Washington, D.C. 20036
Counsel for
Hawkeye Communications, Inc.

Gregory L. Masters, Esquire
Fisher, Wayland, Cooper,
Leader & Zaragoza
2001 Pennsylvania Ave., N.W.
Suite 400
Washington, D.C. 20006
Counsel for
Rosen Broadcasting, Inc.

Barry A. Friedman, Esquire
Thompson, Hine & Flory
1920 N Street, N.W.
Washington, D.C. 20036
Counsel for Marist College

(*) By Hand Delivery


Denise Lynn Felice